



An Roinn Gnóthaí Eachtracha agus Trádála Department of Foreign Affairs and Trade

Our Ref: FOI/Req/19/129

3 May 2019

Dear Mr. Foxe,

I refer to your email request of 17 March 2019, made under the terms of the Freedom of Information Act 2014 (the **Act**), in which you requested the following:

- all records relating to the arrangements for the establishment of the appeal panel for election observer allocation, information on the number of appeals received and the number of successful appeals, names of members and fees/expenses paid to each member; how were these appeal board members recruited and what expertise where they required to have;

- Details of the names of election observers that attended the training for new observers held in Dublin this in January/February; in the case of each participant travel and accommodation costs paid by the Department directly or reimbursed.

I also refer to my email of 3 April 2019 in which I stated that I would require additional time to process the request.

I have identified 19 records which fall within the scope of your request. The records are referenced in the attached schedule. I have made the decision to grant all of the records.

In addition to the records requested, you have also sought information regarding the names of appeals panel members, the fees which may have been paid to those persons, the names of participants in the election observation training course held earlier this year and also any payments made to those persons in connection with their attendance on the course. In providing information on these matters, I have had due regard to the following sections of the Act and other legislation:

- Section 37 – Personal Information
- Data Protection Act 2018/GDPR

Information on the appeals panel and appeals cases

Attached are all the records concerning the arrangements for the establishment of the appeals panel. These include an email, with attachments, from the Department's Human Resources Section to former officers of this Department who retired at the grade of First

Secretary/Assistant Principal Officer or at a more senior grade. This email sought expressions of interest from individuals to act as chairpersons in the panels which appraised the join the election roster, and contains information on the expertise sought and fees payable. Those who were selected as chairpersons received training on the role of an election observer, shortlisting best practice and avoiding unconscious bias. One of the persons trained was asked to become the appeals panel chairperson; the individual concerned did not participate in the original assessment of applications.

You have been provided with records relating to the fees payable to the external panel members (records 1-3). The fee for the appeals panel chairperson was also determined in accordance with these documents. You have also been provided with the documents provided to the appeals panel members to assist them in their deliberations (records 4-17).

In relation to the additional information you requested concerning the appeals and the appeals panel:

1. The appeals panel consisted of an external Chairperson and a member of the Department's staff. The external Chairperson is a retired ambassador. The member of staff is a First Secretary from the Department who did/does not work in the Department's Development Cooperation and Africa Division (the Division which retains responsibility for the election roster).
2. The appeals panel had a combined experience in multilateral work, overseas election observation, human rights, democratization and human resources.
 - Only the external Chairperson was permitted to receive a payment. The payment permitted is set out in records 1-3. We await submission of the associated claim for payment. The member of staff is salaried and received no additional payment or allowance.
 - 34 requests for a formal review by way of appeal were submitted by the appeals deadline (31 December 2018).
 - Further to an examination of the case made by each individual seeking an appeal, 21 requests for review were accepted and forwarded to the appeals panel.
 - In 2 cases, the appeals panel determined there was sufficient justification for the person(s) concerned to be shortlisted to the roster.
 - In the case of 19 appellants, the appeals panel upheld the original outcome.
 - While there is ongoing work on security vetting and other matters, the appeals process, and consequently the wider selection process, has concluded.

Information on the travel and accommodation costs paid/reimbursed to course participants

The travel, accommodation and subsistence costs permitted to training course participants is in line with the amounts set out in the Civil Service Domestic Subsistence allowances set out by the Department of Public Expenditure and Reform (record 18). Information on these costs is contained in the email of 17 January 2019 sent by the Department to those shortlisted to the roster (record 19).

Further to the 17 January email, the Department was asked whether the flight cost of an individual not resident in Ireland could be reclaimed. The Department determined that a person overseas who wished to attend in person could claim an amount of up to €86.75 in total flights costs, based upon a notional train fare from Cork to Dublin. While live streaming

facilities were made available to reduce costs, we accept that there was value to attendance in person, including that the person concerned could benefit from role-play and simulation exercises, and also have the opportunity to meet others shortlisted to the roster.

Personal information

You have requested the names of the members of the appeals panel and the names of the participants in election observer training. Personal information about identifiable persons is exempt under Section 37 of the Act. The exemptions regarding personal information (in this case names) under the Act, and under other legislation, are considered below.

Section 37 of the Act– Personal Information

Under section 37(1), access to a record shall be refused if it would involve the disclosure of personal information relating to individual(s) other than the requester. The relevant section is copied below for ease of reference. Prima facie, the records requested relate to individuals other than the requester.

37. (1) Subject to this section, a head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual).

Where a request would be refused under section 37(1), it may still be granted where the public interest that the information is disclosed outweighs the public interest that the right to privacy of the individual be preserved. This is provided for in section 37(5).

37. (5) Where, as respects an FOI request the grant of which would, but for this subsection, fall to be refused under subsection (1), in the opinion of the head concerned, on balance—
(a) the public interest that the request should be granted outweighs the public interest that the right to privacy of the individual to whom the information relates should be upheld, or
(b) the grant of the request would benefit the individual aforesaid, the head may, subject to section 38, grant the request.

In accordance with the provisions of section 37(5), I have weighed the public interest in the right of the public to access information against the right of individuals to not have their names shared without their consent, or without a legitimate exemption which would supersede this right.

I have considered separately the public interest in disclosing, without consent, the names of the appeals panel members, and also the names of the training course participants.

Having carefully considered the public interest, I have decided in each case to provide the information without disclosing the names.

In considering these matters, I am also mindful of the determination in Case #150034 which is referenced in the Office of the Information Commissioner (OIC) Guidance Note on Section 37. In that case a Requester sought the release of details concerning particular payments and the recipients of those payments. In that case the Commissioner found that the release of the details of the recipients of the payments and the amounts they received would involve the disclosure of personal information relating to the individuals concerned.

Data Protection Obligations

In considering the request to release the names of the appeals panel members and training course participants, I have also considered the right of those persons to have their personal data protected, and the Department's obligation under the General Data Protection Regulation and its implementing legislation under Irish law, the Data Protection Act 2018, (together, **Data Protection legislation**) to not release personal data without the consent of those persons or a legitimate reason to release without consent.

I have considered whether the statutory exemptions¹ for when personal data can be released without consent apply, and find that they do not.

I accept that there is a public interest in the disclosure of certain information regarding the payments, so that, for instance, it is clear that the payments were reasonably made with regard to the circumstances, that the payments were made in line with established procedures, and that information on the use of public funds is accessible to the public.

I also accept that there is a public interest in disclosure of certain information regarding the experience which the Department sought in the appeals panel. However, I am also of the view that this information can be provided without disclosing the names of the individuals concerned.

Information on total payments made

For the personal information reasons outlined above, information on the amounts paid is provided on a totals basis. Payments/refunds are, and will be, made further to the provision of a tax clearance certificate.

To date, twelve (12) payment/refund claims from training course participants have been processed, representing €1352.77 in total. Individual costs/refunds vary depending on the distance travelled, and whether the person(s) required accommodation due to the 08.30 starting time. As stated above we await submission of the payment claim from the appeals panel Chairperson.

Conclusion

I have granted all the records which are responsive to this request, and granted the additional information you have sought to the greatest extent possible having due regard to exemptions

¹ Article 23 GDPR, and Articles 59, 60, 61, 94 of the Data Protection Act 2018, inter alia.

outlined above, and having also weighed the public interest against the obligations I am under to not release personal data without consent.

You may wish to be aware that it is the intention of the Department to make public a list of roster members once the security vetting process is complete. In preparation, and to fulfil the Department's obligations under the EU General Data Protection Regulation (GDPR), as they are being trained, those shortlisted to the roster are being asked to provide written consent to the release of their names, in due course, as part of the list of roster members. The Department estimates that it will be at least another two months before the security vetting process is complete. Further information on the new roster will be made available on the Irish Aid website once the security vetting process is complete.

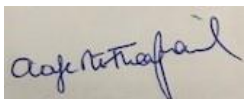
In providing this information, I am mindful of the high level of transparency and accountability attached to the roster selection process and the material which has already been made available by way of the Irish Aid website, in responses to Parliamentary Questions and in the information note prepared for members of the Oireachtas Joint Committee on Foreign Affairs and Trade, and Defence, which is also available on the Irish Aid website. I am of the view that the public interest in this matter is discharged on a continuous and ongoing basis.

Right of Appeal

Should you wish to appeal this decision, you may do so in writing to the Freedom of Information Unit, Department of Foreign Affairs and Trade, 76-78 Harcourt Street, Dublin 2 or by email to foi@dfa.ie. A fee applies for an appeal for access to non-personal information; the level of this fee has been set at €30. For methods of payment, please contact the FOI Unit at foi@dfa.ie, or 01-4082857.

You should make your appeal within 4 weeks (20 working days) from the date of this notification. However, the making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this Department.

Yours sincerely,



Aoife Ní Fhearghail
Deputy Director, Civil Society and Development Education Unit
Development Coordination and Africa Division